

CHAPTER 3 VOLUNTARY DISCLOSURE PROGRAM

701—3.1(421,422,423) Scope of the voluntary disclosure program. Any person located outside of Iowa who is subject to Iowa tax or tax collection responsibilities may be eligible for the voluntary disclosure program. Being subject to Iowa tax may occur when a person has Iowa source income or has representatives or other presence in Iowa. Certain activities by such persons may create Iowa tax return filing requirements for Iowa source income, as defined in 701—subrule 3.1(1), not previously reported. In addition, activities may also result in tax liabilities that are past due and owing.

The purpose of the voluntary disclosure program is to encourage unregistered business entities and persons to voluntarily contact the department regarding unreported Iowa source income. The person or the person's representative may initially contact the department on an anonymous basis. Anonymity of the taxpayer can be maintained until the voluntary disclosure agreement is executed by the taxpayer and the department.

The voluntary disclosure program may be used by the department and the taxpayer to report previous periods of Iowa source income and to settle outstanding tax, penalty and interest liabilities, but it must also ensure future tax compliance by the taxpayer.

3.1(1) *Type of taxes eligible.* Only taxes, penalties and interest related to Iowa source income are eligible for settlement under the voluntary disclosure program. For purposes of this rule, "Iowa source income" means the tax base and the tax collection responsibility for the following enumerated taxes: corporate income tax, franchise tax, fiduciary income tax, withholding income tax, individual income tax, local option school district income surtax, state sales tax, state use tax, motor fuel taxes, cigarette and tobacco taxes, and local option taxes.

3.1(2) *Eligibility of the taxpayer.* The department has discretion to determine who is eligible for participation in the voluntary disclosure program. In making the determination, the department may consider the following factors:

- a. The location of the person must be outside of Iowa;
- b. The person must be subject to Iowa tax on Iowa source income or have Iowa tax collection responsibilities;
- c. The person must not currently be under audit or examination by the department or under criminal investigation by the department;
- d. The person must not have had any prior contact with the department or a representative of the department which could lead to audit or assessment associated with the tax types or tax periods sought to be addressed under the program;
- e. The type and extent of activities resulting in Iowa source income;
- f. Failure to report the Iowa source income or pay any liability was not due to fraud, intentional misrepresentation, an intent to evade tax, or willful disregard of Iowa tax laws; and
- g. Any other factors which are relevant to the particular situation.

3.1(3) *Application to participate in the voluntary disclosure program.* To apply for the voluntary disclosure program, the person or the person's representative must submit a written application to the Nonfiler Unit, Compliance Division, Iowa Department of Revenue, P.O. Box 10456, Des Moines, Iowa 50306-0456. To be valid, an application must include the following:

- a. The types of taxes involved;
- b. Separate statements evidencing compliance with each of the eligibility requirements set forth in 701—subrule 3.1(2);
- c. A complete and accurate description of the person's activities resulting in Iowa source income, the source of the Iowa source income or Iowa tax collection responsibilities, the type and dates, if available, of the activities in Iowa, a description of the product or service sold in Iowa, and the number of activity occurrences in Iowa per year or whether the activities in Iowa per year were continuous;

- d. The reason for noncompliance with Iowa tax law;
 - e. An estimation of the amount of unpaid Iowa tax by the tax type and applicable tax period(s);
- and
- f. Any other matters which are relevant to the particular situation.

The department reserves the right to request additional information that the department determines is necessary to determine or approximate the liability due, and to determine the applicant's eligibility, the accuracy of information presented and statements asserted by the applicant, and the terms of the voluntary disclosure agreement.

3.1(4) *Acceptance or rejection of an application for the voluntary disclosure program.* The department has the discretion to determine if an applicant meets all of the requirements for the voluntary disclosure program. The department will notify an applicant in writing regarding whether the applicant's application for participation in the program is accepted or rejected.

Rejection of an application prior to the execution of an agreement may be based on the applicant's ineligibility; the applicant's noncompliance in submitting information, documents, evidence, or returns within the time period as requested by the department; misrepresentation of a material fact by the applicant or the applicant's representative; or the department's determination that the matter may be best handled by using other means of administration.

3.1(5) *Terms of the voluntary disclosure agreement.* The department has the discretion to settle all outstanding Iowa source income tax, penalty and interest liabilities of the eligible applicant. Settlement terms are on a case-by-case basis. The existence of the voluntary disclosure agreement and the terms of the agreement are to be held confidential by all parties to the agreement. Items considered by the department in determining the settlement terms include: the type of tax; the tax periods at issue; the reason for noncompliance; whether the tax is a trust fund tax; the types of activities resulting in the Iowa source income; the frequency of the activities that resulted in the Iowa source income; and any other matters which are relevant to the particular situation.

If a taxpayer initiates the contact with the department and is eligible for the voluntary disclosure program and complies with the agreement terms, the maximum prior years for which the department will generally audit and pursue settlement and collection will be five years, absent an intent to defraud, the making of material misrepresentations of fact, or an intent to evade tax.

All voluntary disclosure agreements must require that the applicant file future Iowa tax returns, unless the activity by the applicant resulting in the Iowa source income has changed or there has been a change in the law, rules, or court cases which dictate a different result.

The department reserves the right to audit all returns, spreadsheets or other documents submitted by the applicant or a third party to verify the facts and whether the terms of the voluntary disclosure agreement have been met. The department may audit information submitted by the applicant at any time within the allowed statutory limitation period. The department may also assess any tax, penalty, and interest found to be due in addition to the amount of original tax reported. The statute of limitations for assessment and statute of limitations for refunds begin to run as provided by law.

3.1(6) *Commencement of the voluntary disclosure agreement.* The voluntary agreement commences on the date of the execution of the voluntary disclosure agreement. Execution of the agreement is complete when the agreement is executed by the taxpayer and the department's authorized personnel. Prior to the execution of the voluntary disclosure agreement by the taxpayer and the department, the taxpayer is not protected from the department's regular audit process if the identity of the taxpayer, as an applicant, is unknown to the department. However, if the department has knowledge of the taxpayer's identity, as an applicant, the department will not take audit action against the taxpayer during the voluntary disclosure process. However, if a voluntary disclosure agreement is not reached, the department may assess tax, penalty and interest as provided by law at the time the identity of the applicant becomes known to the department.

3.1(7) Voiding a voluntary disclosure agreement. The department also has the authority to declare a voluntary disclosure agreement null and void subsequent to the execution of the agreement. The department may void the contractual agreement if the department determines that a misrepresentation of a material fact was made by the person or a third party representing the person to the department. The department may also void a voluntary disclosure agreement if the department determines any of the following has occurred:

- a. The person does not submit information requested by the department within the time period specified by the department, including any extensions granted by the department;
- b. The person fails to file future Iowa returns as agreed to in the voluntary disclosure agreement;
- c. The person does not pay the agreed settlement liability within the time period designated by the department, including any extensions of time that may be granted by the department;
- d. The person does not remit all taxes imposed upon or collected by the person for all subsequent tax periods and all tax types that are subject to the voluntary disclosure agreement;
- e. The person fails to prospectively comply with Iowa tax law. Whether the person has failed to prospectively comply with Iowa tax law is determined by the department on a case-by-case basis;
- f. The person, based on a determination by the department, materially understates the person's tax liability; or
- g. The person has made a material breach of the terms of the voluntary disclosure agreement.

Voiding of the agreement results in nonenforceability of the agreement by the applicant and allows the department to proceed to assess tax, penalty and interest for that person's Iowa source income or tax collection responsibilities for all periods within the statute of limitations. The department reserves the right to audit all returns, spreadsheets or other documents submitted by the applicant or a third party and to make an assessment for all tax, penalty and interest owed, if the applicant is justifiably rejected for the voluntary disclosure program or the agreement between the person and the department is declared by the department to be null and void.

If the voluntary disclosure agreement is voided or the application for the program is rejected and the department issues an assessment, the taxpayer may protest the assessment pursuant to 701—Chapter 7 and raise the issue of the propriety of voiding the voluntary disclosure agreement or rejecting the application. If the department does not issue an assessment, but does reject the application or voids the agreement, such action is not subject to appeal under 701—Chapter 7, but is considered to be "other agency action" as set forth in Iowa Code section 17A.19(3). See *Purethane Inc. v. Iowa State Board of Tax Review*, 498 N.W.2d 706 (Iowa 1993).

3.1(8) Partnerships, partners, "S" corporations, shareholders in "S" corporations, trusts, and trust beneficiaries. Once the department has initiated an audit or investigation of any type of partnership, partners of the partnership, "S" corporations, a shareholder in an "S" corporation, a trust, or trust beneficiaries, the department is deemed to have initiated an audit or investigation of the entity and of all those who receive Iowa source income from or have an interest in such an entity for purposes of eligibility under subrule 3.1(2) for participation in the voluntary disclosure program.

3.1(9) Transfer or assignment. The terms of the voluntary disclosure agreement are valid and enforceable by and against all parties, including their transferees and assignees.

3.1(10) Confidentiality. The terms of each voluntary disclosure contract are determined on a case-by-case basis. Except as may be specifically required by law or preexisting written agreement, the existence of a voluntary disclosure agreement and the terms of the voluntary disclosure agreement are to be held confidential by the parties to the voluntary disclosure agreement, their representatives, transferees, and assignees. Disclosure of the existence of a voluntary disclosure agreement or the terms of such an agreement in a manner contrary to this rule may result in the agreement being declared null and void at the discretion of the nondisclosing party.

These rules are intended to implement Iowa Code section 421.17.

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